

Appl. No. 10/725,251
Docket No. P146
Amdt. dated December 17, 2007
Reply to Office Action mailed on August 15, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 20 are pending in the present application. No additional claims fee is believed to be due. Claims 9 – 20 have been withdrawn due to a restriction requirement. Claim 1 has been amended. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Response to Requirement for Restriction of Inventions

The Examiner has required, under 35 U.S.C. § 121, election of a single disclosed invention for prosecution on the merits. The Examiner has grouped the claims of the current application into two inventions. Invention I, comprising claims 1 – 8, drawn to a composition comprising oligofructose; and Invention II, comprising claims 9 – 20, drawn to a method comprising administering composition comprising oligofructose. A provisional election without traverse was made via telephone on July 25, 2007 to prosecute the invention of Invention I, claims 1 – 8. This hereby confirms the election to prosecute the invention designated in the Office Action as Invention I, Claims 1 - 8. This election is made without traverse. Claims 9 – 20 have been withdrawn as being drawn to a non-elected invention. Applicants reserve the right to prosecute claims 9 – 20 in continuing applications.

Double Patenting

Claims 1 – 8 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18 – 31 of copending Application No. 10/724,839. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 1 – 8 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 36 of copending Application No. 10/725,248. This rejection is not expressly agreed with or acquiesced to.

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Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Howard

Claims 1 – 8 have been rejected under 35 U.S.C. § 102 as being anticipated by Howard et al. (Nutrition Research, 2000, 20(10), 1473 – 1484) (“Howard”). Applicants respectfully traverse this rejection.

Howard discloses that “[t]wenty-eight adult ovariectomized dogs were fed one of four diets differing in type of dietary fiber to assess the effects of fiber on energy digestibility, partitioning of nitrogen (N) components, and changes in intestinal microflora.” *Abstract*. Howard, however, fails to teach each and every element of the current claims. Claim 1, as amended, is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose, by weight of the composition. Howard discloses the use of fructooligosaccharides at 1.5%. Table 1, page 1474. The Office Action states that ‘the range claimed herein ‘about 0.2%’ and ‘about 0.18%’ is considered to included 1.5%.’ The Office, however, has not put forth any reasoning as to how or why a value such as 1.5%, which is greater than the claimed ranges, can be considered to be within the claimed ranges. Howard fails to teach a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose. As Howard fails to teach each and every element of the current claims, Howard fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Reinhart

Claims 1 – 8 have been rejected under 35 U.S.C. § 102 as being anticipated by Reinhart (US Patent No. 5,776,524). Applicants respectfully traverse this rejection.

Reinhart is directed to a:

pet food product which is useful for reducing the amount of harmful bacteria in the small intestine is provided. The pet food composition contains, on a dry matter basis, from about 0.2 to 1.5 weight percent of a fructooligosaccharide and is fed to a pet, such as a dog, cat or horse.

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Abstract. Reinhart, however, fails to teach each and every element of the claims. Claim 1, as amended, is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose, by weight of the composition. Reinhart discloses the use of fructooligosaccharides from about 0.2 to 1.5 weight percent. The Office Action states that "'about 0.2%' and 'about 0.18%' are deemed to include concentrations 0.2% and 1.0% disclosed in Reinhart et al." The Office, however, has not put forth any reasoning as to how or why values such as 0.2% and 1.0%, which are greater than the claimed ranges, can be considered to be within the claimed ranges. Reinhart fails to teach a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose. As Reinhart fails to teach each and every element of the current claims, Reinhart fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Houdijk

Claims 1 – 3 and 5 – 6 have been rejected under 35 U.S.C. § 102 as being anticipated by Houdijk, et al (Livestock Production Science, 73, 2002, 175 – 184)(“Houdijk”). Applicants respectfully traverse this rejection.

Houdijk is directed to “whether dietary non-digestible oligosaccharides (NDOs) affected pH and volatile fatty acids (VFAs) in gastrointestinal contents and in portal plasma of young pigs.” **Abstract.** Houdijk, however, fails to teach each and every element of the claims. Claim 1, as amended, is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose, by weight of the composition. Houdijk discloses the use of fructooligosaccharide at amounts of 7.5 g/kg and 15.0 g/kg. The Office Action states that “the range discloses 0.75% to 1.5% is considered within the ‘about 0.18%’ claimed herein.” The Office, however, has not put forth any reasoning as to how or why values such as 0.75% and 1.5%, which are greater than the claimed ranges, can be considered to be within the claimed ranges. Houdijk fails to teach a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose. As Houdijk fails to teach each and every element of the current claims, Houdijk fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

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Rejection Under 35 U.S.C. § 103(a) Over Houdijk in view of Howard

Claims 1 – 8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Houdijk in view of Howard. Applicants respectfully traverse this rejection.

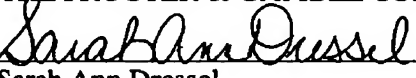
Claim 1, as amended, is directed to, *inter alia*, a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose, by weight of the composition. As discussed above, Houdijk and Howard fail to teach a companion animal composition comprising from about 0.01% to about 0.19% of short chain oligofructose. As best understood by Applicants, a combination of Houdijk and Howard, would result in a composition with 0.75% or 1.5% fructooligosaccharide which are values greater than the claimed ranges. As such, a combination of Houdijk and Howard would fail to provide one of ordinary skill with the companion animal composition of the current application, namely a companion animal composition comprising, among other things, from about 0.01% to about 0.19% of short chain oligofructose. Houdijk and Howard, either alone or in combination, fail to render the claims of the current application obvious. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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